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Paper No. 5

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**COPY MAILED**

OCT 16 2002

**OFFICE OF PETITIONS**

In re Application of :  
Kutay, Akin, Akin, Albek, :  
Gilbert, and Stremel : DECISION REFUSING STATUS  
Application No. 10/082,427 : UNDER 37 CFR 1.47(a)  
Filed: 22 February, 2002 :  
Attorney Docket No. 3866P008 :  
:

This is in response to the petition filed under 37 CFR 1.47(a) on 9 September, 2002.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

**FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.**  
Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified issue application was filed on 22 February, 2002, without an executed oath or declaration. Accordingly, on 27 March, 2002, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, requiring an executed oath or declaration and a surcharge for its late filing.

In response, on 9 September, 2002 (certificate of mailing date 27

August, 2002), the present petition was filed, accompanied by the petition fee, surcharge, a three (3) month extension of time, and a declaration naming Ali Kutay, Cihan Akin, Erhan Akin, Hakan Akin, Eliahu Albek, John Gilbert, and Paul Stremel as joint inventors and signed by joint inventors Kutay, Albek, and Stremel on behalf of themselves and joint inventors Cihan Akin, Erhan Akin, Hakan Akin, and Gilbert.

Petitioners assert that the application papers were sent to joint inventor Erhan Akin "to gather signatures on May 28, 2002 and May 30, 2002."

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee;
- (4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and
- (5) a statement of the last known address of the non-signing inventor.

The petition lacks items (1) and (2). In regards to item (1), petitioners have not shown proof that a copy of the application (specification, including claims, drawings, if any, and the Declaration) was sent or given to each non-signing inventor (or his counsel) for review.<sup>1</sup> The showing of record is that the application papers were sent to only one non-signing inventor with the hope that inventor would attempt to get the other non-signing inventors to sign.

Petitioners may show proof by providing a copy of the cover letter transmitting the application papers to the non-signing inventors or details given in an affidavit or declaration of facts by a person having first-hand knowledge of the details.

Likewise, before a *bona fide* refusal to sign can be shown, petitioners must show that the application as filed was sent or

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<sup>1</sup>MPEP 409.03(d).

given to each non-signing inventor for review.<sup>2</sup> If there is a written refusal, a copy of that written refusal should be provided with any renewed application. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

In respect to item (2), above, it is noted that the declaration filed on 9 September, 2002, is defective in that it contains non initialed and/or non-dated alterations.<sup>3</sup> Specifically, there are unsigned and/or undated changes for joint inventor Eliahu Albek. A new oath or declaration in compliance with 37 CFR 1.63 and 1.67, signed by the inventor to whom the error or deficiency relates is required.<sup>4</sup>

Further correspondence with respect to this matter should be addressed as follows:

By mail:                   Commissioner for Patents  
                                 Box DAC  
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By FAX:                   (703) 308-6916  
                                 Attn: Office of Petitions

By hand:                   Crystal Plaza Four, Suite 3C23  
                                 2201 S. Clark Place  
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Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.



Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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<sup>2</sup>Id.

<sup>3</sup>See 37 CFR 1.52(c).

<sup>4</sup>37 CFR 1.67(a) (2).